

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

THOMAS WILLIAM DYER, JR.,

Petitioner,

v.

CIVIL ACTION NO. 5:14-cv-19140
(Criminal No. 5:13-cr-00107)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

On June 23, 2014, the Petitioner filed a *pro se* Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 (Document 50), and a Motion to Proceed In Forma Pauperis, (Document 52). On April 29, 2015, the Respondent filed a Motion to Dismiss Movant Thomas William Dyer, Jr.'s Motion to Vacate, Set Aside, or Correct Sentence Pursuant to U.S.C. § 2255 (Document 64).

By Standing Order (Document 53) entered on July 9, 2014, this action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On February 19, 2016, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 69) wherein it is recommended that: 1) the Petitioner's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 (Document 50) be denied, as it is without merit; 2) the Petitioner's Motion to Proceed In Forma Pauperis

(Document 52) be denied as moot; 3) the Respondent's Motion to Dismiss Movant Thomas William Dyer, Jr.'s Motion to Vacate, Set Aside, or Correct Sentence Pursuant to U.S.C. § 2255 (Document 64) be denied as moot; and 4) this action be dismissed with prejudice and removed from the Court's docket.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by March 7, 2016, and none were filed by either party. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that:

1. The Petitioner's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 (Document 50) be **DENIED**, as it is without merit;
2. The Petitioner's Motion to Proceed In Forma Pauperis (Document 52) be **DENIED AS MOOT**;
3. The Respondent's Motion to Dismiss Movant Thomas William Dyer, Jr.'s Motion to Vacate, Set Aside, or Correct Sentence Pursuant to U.S.C. § 2255 (Document 64) be **DENIED AS MOOT**; and
4. This action be **DISMISSED WITH PREJUDICE** and **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Eifert, counsel of record, and any unrepresented party.

ENTER: March 14, 2016



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA